

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, PALISADES CHARTER HIGH
SCHOOL AND LOS ANGELES COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2013060784

ORDER DENYING PALISADES
CHARTER HIGH SCHOOL'S MOTION
TO DISMISS

On June 14, 2013, unrepresented Parent, on behalf of Student, filed a due process hearing request (complaint) against Los Angeles Unified School District (LAUSD), Palisades Charter High School (Palisades) and Los Angeles County Office of Education (LACOE).

On July 5, 2013, Palisades filed a motion to be dismissed as a party to Student's complaint, contending that Student's claims against it are barred by the two-year statute of limitations. Palisades submits the sworn declaration of its director of student support services giving an alternative version of events from those alleged in Student's complaint, supported by numerous exhibits. No opposition has been received.

APPLICABLE LAW

The statute of limitations for IDEA due process complaints in California is two years prior to the date of filing the request for due process. (Ed. Code § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations, including where (i) the parent or student was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) the local educational agency's withheld information from the parent or student that was required to be provided to the parent or student.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

DISCUSSION

Student's complaint alleges that, from March 2010, Student has suffered increasing post-traumatic stress and anxiety as the result of a kidnapping and sexual molestation at knifepoint, ultimately resulting in Student attending a nonpublic school through an independent study program due to her inability to cope with large groups of people in public places. The complaint alleges that Palisades ignored repeated requests by Parent for a small school setting and a mental health assessment, and that Palisades continued to offer Student placement at its large comprehensive high school and failed to have Student assessed for mental health services. Student alleges that the IEP dated April 4, 2011 was inappropriate, but also that Palisades refused, from August 2010 through March 2012, to respond to Parent's inquiries and documentation of Student's deteriorating mental health, or to provide Parent with information on how to obtain appropriate special education and related services for her child.

Palisades contends that the two-year statute of limitations of Education Code 56505(l) bars any claims arising before June 14, 2011, including any challenge to the April 4, 2011 IEP. It submits a detailed declaration and extensive documentary evidence that Student's mother knew, or should have known, of any denial of a free appropriate public education (FAPE) on or before June 14, 2011.

District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. In addition to her challenge to the April 2011 IEP, Student's complaint alleges facts that may fall within the narrow exceptions to the two-year statute of limitations. A factual inquiry will be required to determine whether, and to what extent, District's conduct involved misrepresentations of fact or withholding of information that deprived Student's parent of an opportunity to timely challenge her child's educational program, and whether and to what extent such a determination would toll the statute of limitations. This inquiry will be made at the hearing, and District may argue the bar of the statute of limitations at that time.

District's motion to dismiss portions of Student's complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: July 11, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings